HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

C.R.P.No.1554 of 2004

ORDER:

This revision is filed by the defendant against the order dated 19.01.2004 in I.A.No.1413 of 2003 in O.S.No.1573 of 2001 passed by the VII Senior Civil Judge, City Civil Court, Hyderabad.

2. The suit O.S.No.1573 of 2001 from which the revision emanates is filed by the plaintiff for recovery of money from the defendant. The said suit was decreed in favour of the plaintiff. However, according to the plaintiff, an error was committed by the lower Court in passing the decree. The suit was to be decreed for a sum of Rs.7,56,000/- but by mistake a figure of Rs.5,68,946/- was mentioned in the decree. Therefore, an application was filed u/s.152 CPC for amending the figure as Rs.7,56,000/- instead of Rs.5,68,946/-. This application was allowed by the lower Court by its order dated 19.01.2004 in I.A.No.1413 of 2003. This order is now challenged in the present revision.

3. This Court has heard Ms. C. Sindhu Kumari, learned counsel for the revision petitioner/defendant and Sri C.V. Mohan Reddy, learned counsel for the respondent/plaintiff.

4. According to the learned counsel for the appellant, the error in question is neither a clerical error nor an arithmetical error and that the lower court wrongfully exercised its jurisdiction.

5. On the other hand, it is the submission of the learned counsel for the respondent that the order passed is correct and a simple typographical error that occurred was corrected. Therefore, the learned counsel for the respondent supports the impugned order.

6. This Court perused the record and heard the learned counsels. The case of the plaintiff in the suit is that an amount of Rs.7,56,000/- is payable to the plaintiff by the defendant and that out of total dues of Rs.25,20,000/-, the defendant has paid Rs.17,64,000/- leaving behind the balance of Rs.7,56,000/-. On the other hand, it is the case of the defendant that they have paid all the dues except a sum of Rs.5,68,946/-. The plaintiff therefore relies on the figure of Rs.7,56,000/- and the defendant states that Rs.5,68,946/- is payable to the plaintiff. The lower Court while passing the judgment in the main suit mentioned the figure as Rs.5,68,946/-.

7. As can be seen from the main judgment, the lower Court did not actually go into the figures *per se* and did not review the entire accounts. It broadly went into the issue. A bill by bill analysis of the dues and payments made is not really reflected in the judgment. The broad principles alone were decided. Thereafter, the lower Court held that a sum of Rs.5,68,946/- is due to the plaintiff. If the Court had gone into a minute analysis of all the bills and the payments made under each of the bill, then it could be presumed that the

Court analyzed the matter in depth and came to a conclusion about the amount due.

8. In this case, it is noticed that the Court did not conduct a minute analysis and came to a conclusion on the basis of the available facts and figures that the admitted sum is due. In the process, this Court feels that the error has been committed by the lower Court.

9. It is a fact that in the dispute between the parties, the only issue that has to be decided is whether Rs.7,56,000/- was due or Rs.5,68,946/- was due. The first figure is the amount due as per the plaintiff and the second figure is the amount due as per the defendant. Ultimately, the Court held that in page-9 after ruling out the main defence about the quality of the bags as follows:

> "the contention raised by the defendant with regard to the quality of the bags cannot be considered. Thus, from the above circumstances, I hold the defendant's corporation has failed to pay the balance amount."

A reading of the above para, makes it apparent that as the Court negatived the defence raised, it awarded the sum due. However, in awarding the sum due, the typed figure shows Rs.5,68,946/- instead of Rs.7,56,000/-.

10. It is also important to note that the judgment and decree were passed in the suit on 03.11.2003. The application to correct the decree u/s.152 CPC was filed in December, 2003, a counter affidavit has been filed immediately thereafter and orders were pronounced in this application on 19.01.2004. The order was passed by the very same Judge,

who passed the decree in November, 2008. He was eminently qualified to comment about the error, since it is his error that is being questioned. He very clearly stated that the amount payable should have been mentioned as Rs.7,56,000/- and that due to oversight, the amount was mentioned as Rs.5,68,946/-. Thus, the Judge, who made the mistake, corrected the clerical error that occurred in the typing.

11. In the circumstances of the case, this Court holds that the genuine clerical error had occurred. An arithmetic error is an error of calculation while a clerical error is an error of typing etc. This Court holds that as required under law, an application was filed immediately after the error was noticed and there is no delay in filing the application. The order was also passed by the very same Judge, who passed the main judgment. Therefore, this Court holds that in the facts and circumstances of the case, there is no error committed by the lower Court in allowing the correction of the figure.

12. There are no merits in the revision and the same is therefore dismissed. The order dated 19.01.2004 in I.A.No. 1413 of 2003 in O.S.No.1573 of 2001 passed by the VII Senior Civil Judge, City Civil Court, Hyderabad is confirmed. However, there shall be no order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 08.03.2018
Isn